



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject **ACTION:** NEPA Requirements for Transportation
Enhancement Activities (Reply Due: December 15)

Date: October 28, 1996

From Rodney E. Slater
Administrator

Reply to
Attn. of: HEP-30

To Regional Administrators

Section 316 of the National Highway System Designation Act of 1995 has given us a mandate to further streamline the processing of transportation enhancement activities (TEA) projects under the National Environmental Policy Act of 1969 (NEPA). Accordingly, as part of the streamlining process, Section 316 of the 1995 act directs the Secretary of Transportation to develop categorical exclusions under NEPA for TEA's.

We already have considerable flexibility under the current regulation to streamline the NEPA process for TEA's, consistent with the principles of environmental protection and enhancement. For example, Section 771.117(c) identifies actions that, by their nature, meet the criteria for CE's. Some of these actions cover TEA-type projects, namely construction of bicycle and pedestrian lanes, paths, and facilities; landscaping; acquisition of scenic easements; and such nonconstruction activities as publication of a scenic byways brochure, a historic bridge photobook, or a geographic information system for archaeological survey of a transportation project. As the provision states, these actions "normally do not require any further NEPA approvals"

Thus, the fact that a TEA project falls within one of these listings is usually approval enough; NEPA documents and FHWA approval would be required only if unusual circumstances are involved in the proposed action or project. Such circumstances include the presence of significant environmental impacts, substantial controversy on environmental grounds, significant impact on properties protected by Section 4(f) of the Department of Transportation Act of 1966 or Section 106 of the National Historic Preservation Act of 1966, or inconsistencies with any Federal, State or local requirement relating to the environment.

Under another provision, Section 771.117(d), additional TEA actions may qualify for a CE classification, but because of the greater possibility of impacts with these projects, FHWA approval of the classification is required. The list in this section consists only of examples to illustrate the types of projects that may qualify; TEA's do not have to match one of the examples to qualify for a CE classification. The applicant (the State or other project sponsor) is responsible for providing information to allow the FHWA to decide if a CE classification is proper. It is important to state that because most TEA's are small-scale projects, they should almost always be processed as a CE. Only a modest amount of information is required to describe their potential environmental impacts and to demonstrate that they do not have significant impacts.

For types of projects not listed in Section 771.117(c) or covered by Section 771.117(d), our approval of a CE classification under Section 771.117(d) can be accomplished on a project-by-project basis or programmatically. As discussed in the attached guidance memorandum dated March 30, 1989, the programmatic approach allows a State transportation department and the FHWA to concur in advance that additional types of projects satisfy all the criteria for a CE classification. The use of programmatic CE approvals has been an effective way of ensuring that the letter and spirit of NEPA are satisfied in a way that reflects the particular nature of the environment and the program in each State.

I urge you to review the extent to which each State in your region has used the programmatic CE approach to ensure that TEA's receive the full advantage of this option. You are encouraged to use the programmatic CE process for TEA projects whether or not they are included in the lists of example projects in the Section 771.117(c) or (d). When we modify 23 CFR 771, a section will be included to state that all TEA projects normally should be processed as CE's. This change will be consistent with Section 316 of the 1995 act.

To advise the Congress regarding the status of our streamlining efforts, I request that you provide us a brief description, by December 15, of any process used for streamlining NEPA approvals for TEA's in your States. Please describe how the CE classification has been applied to TEA projects under Section 771.117(c) and (d). Where programmatic approvals have been used, we would like to know which types of projects are covered, whether other types of projects have been proposed but not approved, and the process for securing approvals, including the roles of the State transportation department, the FHWA division office, and project sponsors in assembling and reviewing environmental documentation. We would also like to know about cases where a TEA project required preparation of an EA or an EIS.

Attachment